# APPENDIX A.

## Legislative History.

### (a) The evils aimed at.

While the Hepburn Bill was under discussion Senator Elkins offered an amendment as follows (40 Cong. Record, 6455, May 7, 1906):

> "It shall be unlawful for any common carrier subject to the provisions of this act, unless authorized by its charter to do so, to engage, directly or indirectly, in the production, manufacture, buying, furnishing, or selling of coal or coke or any other commodity or commodities of commerce in competition with any shipper or producer on its line or lines: *Provided,* That nothing in this act shall be construed to prevent a carrier from mining coal exclusively for its own use."

This was the first concrete step in the adoption of the Commodities Clause.

Substantially the entire debate upon the Commodities Clause occurred in the Senate May 7, 8, 9 and 17, 1906, and the greater part of this debate related to parliamentary procedure. The senators, however, in the course of debate brought in review before the Senate the evils which semed to demand legislation and they made a record very definitely and specifically of what in their judgment should be done and what in their judgment should not be done.

Immediately after calling up the amendment above quoted, Senator Elkins said (40 Cong. Record, 6456, May 7):

> "Mr. President, I want to confine the railroads to the legitimate business for which they are incorporated—the transportation of freight and passengers—and to forbid them engaging in any other business, especially the business of mining, producing, and selling coal or any other commodity on their lines in competition with a shipper."

Again Senator Elkins said (40 Cong. Record, 6456, May 7):

> "Mr. President, I want to get this amendment in such shape that it will stop an evil or an abuse that obtains in West Virginia, Pennsylvania, and other coal-mining States. * * * I thought * * * it would be better to put into the statutes of the United States a positive prohibition that railroads should not engage in the mining and manufacture and production and selling of coal and coke, and that they should be confined to the legitimate business for which they were chartered, to-wit, the transportation of freight and passengers."

Senator Spooner said (40 Cong. Record, 6459, May 7):

> "Mr. President, the evil sought to be remedied by this amendment is one as to the existence of which there can be no question. I think it has relation principally to the mining of coal. Companies engaged in interstate transportation, even though engaged lawfully in the States in mining and producing coal, have been able to freeze out independent

operators. They have been able thereby to diminish the output of a necessary of life, and to put upon consumers throughout the country a price to suit their own will. That ought to be remedied."

Senator Elkins said (40 Cong. Record, 6496, May 8):

"Mr President, the purpose of introducing this amendment was to correct an abuse and evil growing up in the State of West Virginia and in other mining States, owing to the fact that railroads engage in competition with producers on their lines."

Senator Elkins said (40 Cong. Record 6498, May 8):

"What I am contending for in this amendment is that the independent operator, the individual mine owner, shall be protected in his business against the rapacity and injustice of railroads owning coal lands. No independent operator, no small mine owner, can afford to engage in competition with a railroad company that owns twenty or thirty or forty thousand acres of coal doing business in the same locality.
* * *

"I believe in confining strictly and positively railroads to doing two things—the transportation of freight and the transportation of passengers, and engaging in no other business of any kind whatsoever, directly or indirectly."

Senator Elkins also said (40 Cong. Record, 6499, May 8):

"Mr. President, I think it is plain, in the words of the substitute offered by the Senator from North Dakota, that if common carriers are engaged in mining and selling coal or coke or other commodities along their lines in competition with shippers, it

should be prohibited. That is a plain, simple proposition. It is an evil and an abuse, and if it is not checked it will enable the railroads of the country to absorb the mining business along their lines to any extent."

The consideration of the subject on May 9 was by the Senate in Committee of the Whole (40 Cong. Record, 6551).

Senator Culberson said (40 Cong. Record, 6562, May 9):

"Mr. President, the chief evil which we desire to eradicate in this matter is the ownership of coal mines by railroad companies engaged in interstate commerce. * * * The evil is the ownership and the production by the corporations themselves aside from their legitimate business of transportation."

Senator Carter said (40 Cong. Record, 6564, May 9):

"* * * The chief purpose of the amendment is to cure an evil which has become well known to the country at large—the control of coal by the railroads in the anthracite region of Pennsylvania. That is the main purpose of the amendment. Of course the evil extends to West Virginia and contiguous territory. But therein rests the point to which most of the discussion is directed, and that is the evil sought to be corrected. It will require the best thought of the Interstate Commerce Committee to apply a general law to that existing evil and at the same time avoid touching a vital point in the industrial life of the country in many other sections."

Senator Tillman said (40 Cong. Record, 6567, May 9):

"We all know there are grave abuses and outrageous conditions not only in West Virginia, but in Pennsylvania, in East Tennessee, in the Indian Territory, and I do not know where else. I will read, for the information of the Senate, what very few Senators have ever read since I introduced my report here, some observations I made on this very topic in the brief report which I presented.

'The necessity for granting, at some time, relief to producers and shippers in several important particulars not provided for in this bill may be wisely considered in connection with the pending discussion—'

"I am speaking of the rate making—

'There is no provision, except a most vague and indefinite one, for the anomalous and outrageous condition of affairs disclosed as existing in West Virginia. The letter of Governor Dawson of that State, published in the Congressional Record of February 8, and the memorial of the Red Rock Fuel Company, published in the Record of January 29th, taken together, disclose a situation that is almost beyond belief. The railroads have seized on the vast mineral wealth of the State in its extensive coal fields and have created a monopoly in that prime necessity of life, fuel.

'Landowners who wish to mine and ship their coal are denied access to market, while the roads themselves are engaged extensively in mining and shipping coal; and when private individuals or companies seek to develop their coal lands and send their product to market, the railroads deny or refuse to grant them the privilege of engaging in inter-

state commerce. In the case of the Red Rock Fuel Company physical connection was refused. They would not permit this coal-mining company to join its track with a switch to the track of the Baltimore and Ohio Railroad and thus obtain an outlet. In other cases mines have had to shut down because of the denial of cars by the railroads. The coal output, in effect, is controlled absolutely by the railroads in their own interest, and in the case of this particular State the infamy of the situation is aggravated by the fact, which is practically proven'—

"And has since been absolutely proven—

'that the three railroad systems entering West Virginia are controlled by an outside road, the Pennsylvania.

'There are many other instances in which the proof has been furnished of even more outrageous abuse of power than in the instance cited of the Red Rock Fuel Company case. Where connections between the mines of private companies were already in existence under arrangements made some years ago, the tracks have been torn up and virtual confiscation of the property is threatened. Vested with the rights of eminent domain to construct their lines and granted liberal franchises and charters, the railroads, designed to be public carriers for the benefit of the whole people, in the last few years have become rapidly transformed into the veriest band of robbers—highwaymen who do not thrust their pistols in the faces of their victims and demand money or their lives, but who levy tribute in freight rates which are as high as the traffic will bear, deny access to market, monopolize with brazen effront-

ery one of the prime necessaries of life—coal—and in every way show their absolute contempt for the people and the people's rights.

'The condition of affairs in West Virginia is even worse in Pennsylvania, and from every point of the country come reports that the railroads have practically already obtained control of almost all the coal lands, and where they have not bought the land itself they have obtained mineral leases and are rapidly carrying out the scheme of monopolizing the fuel supply of 85,000,000 people.' * * *"

Senator Bacon said (40 Cong. Record, 6568, May 9):

"The evil sought to be remedied, as I understand, is that the railroad companies own coal mines and monopolize the production and the carriage of this property."

Senator Tillman, on May 17, repeated much of what is quoted above (40 Cong. Record, 7011).

The case of *New York, N. H. & H. R. R. Co. v. Interstate Commerce Commission,* 200 U. S. 361, 50 L. ed. 515, had been decided by the Supreme Court of the United States on February 19, 1906. It appeared in that case that the Chesapeake and Ohio Railroad Company had sold large quantities of coal to be delivered at a certain place at a price less than the cost of purchase by that railroad company plus the regular published freight rate for transporting the coal from the point of purchase to the point of delivery. The Supreme Court had held this transportation unlawful. The case was referred to many times in the course of debate as illustrating the evils of a railroad company owning or being interested in the commodities which it trans-

ported. It was referred to by Senator Elkins (40 Cong. Record, 6498), by Senator Bacon (40 Cong. Record, 6499 and 6500), by Senator Foraker (40 Cong. Record, 6500), by Senator Lodge (40 Cong. Record, 6509), by Senator Culberson (40 Cong. Record, 6562), and by Senator Teller (40 Cong. Record, 6565, 6566).

From what is quoted above from the debates upon this subject it is very apparent that the primary evil which was engaging the attention of Congress was the practice which had grown up of railroads in Pennsylvania and West Virginia and other places, principally in the East, of acquiring coal mines and then transporting the coal on their own railroads resulting in great discrimination against independent producers of coal.

But while considering this evil the Senators were very much alive to the fact that there were other circumstances and conditions throughout the country which ought not to be disturbed but which might be disturbed unless the Commodities Clause as finally adopted was carefully and discriminatingly phrased.

**(b) Ownership of railroads by industrial companies not to be disturbed.**

Many of the Senators voiced the fear that by acting hastily they might adopt a law that would include more than it was wise to include.

Senator Tillman said (40 Cong. Record, 6460, May 7):

> "Mr. President, I think when Senators consider this question a little more they will find that there are other sides to it which will add to its perplexities. Granting that all of us are earnestly desirous of accomplishing the result of divorcing production

and transportation—and I have heard no objection to it, stated in a general way like that, from any source—the more you consider it the more troublesome it grows. At least that has been my experience, and I have been thinking a great deal about it; and I have had suggestions from various sources. I have asked half a dozen great lawyers to suggest amendments; each and every one of them differ; and as yet I have not been able to get any satisfactory solution so far as my own mind goes. * * *

"For instance, suppose we should limit the engaging in interstate commerce of a public carrier to the production by others, forbidding transport beyond the State line of any article which he himself was producing, what would become of that class of cases or those conditions in some region where the country is sparsely settled and where there is a great lumbering industry—that is, a great deal of lumber standing in trees? I have known half a dozen railroads in the South, in my own limited scope of view, that have been built entirely and solely for the purpose of hauling out the lumber from the swamps and backwoods to get it to market; and but for the fact that the lumbermen built their own road they absolutely would have had no market for their product

"Take coal. Go into West Virginia and you find in some of those coves and backwoods large and rich deposits of coal which will lie there—I will not pretend to guess how long, but fifty or a hundred years—undeveloped and unproductive, lacking in value to the present owners, if you say to a company, 'You shall not buy this coal and construct a road to market your coal and get it out so as to put it on the market.' So you will put a ban on those lands and they will lie there useless.

"I take West Virginia as an illustration, because I have had a great many communications from down there complaining about the discrimination and injustice of the Baltimore and Ohio and the Chesapeake and Ohio in their dealings with private operators. Lots of those people have been bottled up, but those little roads have been built primarily for the purpose of getting to the through roads or interstate-commerce roads. While they will transport small quantities of other products, they will build primarily and solely for the purpose of marketing the coal which they have bought, and without the coal there would have been no road, and without the road the coal is valueless. So if you say a man who undertakes to build his own road solely for the purpose of marketing his own coal shall not continue to run the railroad, you put up a barrier to his utilization of his own property.

"As I said, you cannot have any sweeping and general provision here without doing serious injury somewhere. * * * You see the perplexity and the difficulty of legislating along this line without seriously jeopardizing somebody's interests."

Senator Dick said (40 Cong. Record, 6496, May 8):

"Mr. President, the inquiry of the Senator from New Jersey (Mr. Dryden) is both pertinent and important. Either the time should be extended very considerably or this matter should be dealt with in an entirely separate bill. In the first place, we recall that some years ago the iron masters of Pittsburgh constructed a railroad, extending through a part of the State of Pennsylvania and a part of the State of Ohio, to reach the ports of Lake Erie for the purpose of carrying iron ore from the Lake

ports to Pittsburgh because of extortionate rates charged them by the railroads. If this amendment is adopted and that road is still in the possession of the men who constructed it, they must either go out of the business of manufacturing steel or the business of common carrier. * * *"

It will be particularly noted that the railroad referred to extending from Pittsburgh to Lake Erie is 160 miles in length and performs a general common carrier service. It is now known as the Bessemer and Lake Erie Railroad Company.

Senator Bacon said (40 Cong. Record, 6499, May 8):

"Mr. President, I am very much inclined to the opinion, as has been expressed by several Senators, that this is a matter we should not attempt to deal with in the pending bill. * * *

"That is an extremely difficult question, and it is one which not only will affect illegitimate enterprises, if I may so denominate them, but it is one which will affect legitimate enterprises, and therefore it should be regulated with great care, so as not in any manner to do unwonted injury to those legitimate enterprises.

"I will give an illustration. Of course, in these matters the fact that it will affect industries in our particular localities naturally occurs to Senators. The Senator from Pennsylvania instanced the case of the lumber trade in North Carolina, and that is true also in the State of Georgia. The southern half of the State of Georgia is a timber-produc-

ing section. Very many railroads have been built in that section for no purpose except to develop the timber industry. Men owning large tracts of timber land remote from railroads have built railroads into those tracts of land for the purpose of being able to market the timber. After they have built the railroads, while they are engaged primarily and principally in the transportation of timber which they themselves cut, they also take some business from the public in the way of the carrying of passengers and freight, and however minor it may be compared with the main business of carrying the timber, it constitutes them as common carriers."

Senator Dolliver said (40 Cong. Record, 6500, May 8):

"No more difficult railway pr[illegible]n exists than this connection of the carriers with the productive enterprises of the country. That relation is in all forms. Some railroads own coal mines and undertake to engage in the distribution of coal, and curiously enough, some coal mines own railroads, because it has become a favorite method in these days in organizing a coal corporation to anticipate in a way the probable attitutde of Congress, and the public dreads a mixture of the two functions. So it is not uncommon to find great coal corporations having as a part of their charter rights the right to build and operate railroads."

Senator Carter, before the Senate as a Committee of the Whole, said (40 Cong. Record, 6563 and 6564, May 9):

"We have one enterprise in the State of Montana in which there are today over 20,000 men engaged at good wages in the production of copper. It constitutes the great industrial enterprise of our State.

This copper is reduced twenty miles from the mines. The mines are chiefly in and about the city of Butte. The largest copper smelter in the world is located at Anaconda, some twenty odd miles distant. For many years the great mining companies undertook to have their ores transported from Butte to Anaconda through the agency of an independent railroad company. They found the rolling stock inadequate; the cars were not suited to the purpose; the service was fitful and uncertain, and rates were often prohibitive.

"In order that this work might proceed, the copper companies on their own account built a railroad from the copper mines to the copper smelter, a distance of 20 miles. In actual operation this intervening piece of track between the mine and the smelter is as essential to the operation of the general business as the tracks within the levels themselves, upon which run the small cars filled with ore.

"This railroad, running from Butte to Anaconda, was constructed principally to carry the copper ore from the mine to the smelter. Incidentally passengers are carried over it also. The Great Northern uses that track for twenty miles, because Anaconda is the terminal of the Great Northern passenger trains which reach there from St. Paul and Puget Sound. It is therefore partly engaged in interstate commerce. * * *

"Now, what would be the effect of the amendment of the Senator from West Virginia? This company would be compelled to dismember itself. The effect would be to disrupt and disorganize and devitalize the best and largest industry and enterprise in that State. The enterprise cannot be successfully conducted without the railroad, and the railroad cannot be operated successfully by an outside company."

Senator Clark said (40 Cong. Record, 6565, May 9):

"There is another feature of this question which I want to present to the Senate. All over that western part of this continent, as has been shown by the development of a half century, discoveries of great mines have been made and are still being made everywhere. In many instances mines are found containing base metals, lead and copper, at points many miles from any railroad. Persons who own those mines of base metals cannot work them unless they have railroad facilities. Butte was kept back for fifteen years for want of railroad facilities, and I know of a number of instances where mines have been discovered and developed and found to be big mines, but being owned by individuals or perhaps by a single company there was no railroad company that would undertake to build a line to them for the reason that it would be hazardous, as they might shut down the mines at any time. What was the result? The owners of the mines—the individuals or the company, as the case might be—have been obliged to build a branch road themselves to the nearest road, in order to secure access to the markets of the world for the products of their mines.

"There is an instance of this kind in southern Arizona, the Copper Queen Mining Company is owned by Phelps Dodge and Co., and they have a number of the greatest mines in that wonderful Territory. They were obliged for their own protection to build a road about 200 miles in length, and today it is in operation. When that road was con-

structed it became a common carrier, subject to the rules and regulations of the Interstate Commerce Commission. Now, what are you going to do under this amendment with such a proposition as that? I myself was obliged to build a road shorter than that —but 28 miles in length—before I could get the products of a copper mine to the market. When I completed that road, some fifteen years ago, it became an interstate-commerce road, because all the products went out and supplies came in through other States and Territories."

Senator Teller said (40 Cong. Record, 6565 and 6566, May 9):

"What I want to call the attention of the Senate to is simply that the complaint there was with reference to the transportation of coal. The Senator from West Virginia (Mr. Elkins) who has introduced this subject in making his complaint simply because of the unfair treatment of the coal miners and coal dealers of that State. The Senator from Montana who first spoke (Mr. Carter) has told us something of the difficulty in dealing with this question, and so has the Senator from Montana (Mr. Clark) who spoke last. With some knowledge of the conditions not only in Montana, but in Arizona, what both Senators have presented here satisfies me that there is danger of this legislation going very much beyond the point we ought to go. We are very liable to do more harm than good. If we would confine it entirely to the coal business for the time being, I think perhaps it would be better than to include all commodities and all kinds of service."

Senator Fulton said (40 Cong. Record, 6566 and 6567, May 9):

> "All over the West, as the Senator from Colorado (Mr. Teller) has said, there are little railroads which have been built to connect with coal mines and sawmills, that have been built simply to get the product from the mills and the mines. In such cases mining and milling are the principal enterprises. The railroading is merely incidental thereto, and yet those railroads connect with interstate lines, or with other railroads connecting with transcontinental or interstate lines. Hence these small roads doubtless would be held to be engaged in interstate commerce. It seems to me, Mr. President, that a distinction should be made and that proper exceptions should be provided in any legislation that shall be enacted on this subject in order to protect such enterprises. Just what those exceptions should be and just how they should be framed I am not prepared at this moment to say, and it does not seem to me that any other Senator is prepared to say."

We have now seen that during the debate there was brought to the attention of the Senate repeatedly and forcefully the fact that throughout the country there were many industrial companies which owned railroads. The opinion was expressed by many of the Senators that the ability of these industries to own railroads was very important to the prosperity of the country. These Senators were very urgent that nothing should be done while attempting to correct the evils relating to the coal business in the East which would injure the business in the West.

Now let us see what they did about it.

**(c) The Senate made a very definite and specific record that it did not desire the Commodities Clause to apply where the shipper of a commodity also owned an interest in the railroad.**

On May 9th, Senator McLaurin offered as a substitute for the draft previously under consideration, the following (40 Cong. Record, 6559):

> "From and after May 1, 1908, it shall be unlawful for any common carrier to transport from any State, Territory, or District of the United States to any other State, Territory, or District of the United States or to any foreign country any article or commodity manufactured, mined, or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary or used in the conduct of its business as a common carrier."

This, it will be noted, is substantially the Commodities Clause as finally adopted. This draft was withdrawn a few moments later (40 Cong. Record, 6559). It was later offered by Senator Elkins the same day (40 Cong. Record, 6561) and again offered by Senator Elkins later in the day (40 Cong. Record, 6568).

It was agreed to as a substitute for the draft previously pending (40 Cong. Record, 6569, 6570). This action was taken by the Senate as a Committee of the Whole (Cong. Record, 6551).

On May 17, the clause in the form last quoted came up for consideration before the Senate (40 Cong. Record, 7011).

Senator Tillman said (40 Cong. Record, 7011):

> "I have here a communication from a gentleman engaged in coal production, and he points out that this amendment would not prevent the ownership of coal properties by the ownership of stock in coal companies; that it would not prevent the control of coal companies by officials of railway companies; *that it would not touch the ownership of railroads by coal companies or the common ownership of railroad companies and coal companies.*" (Italics ours.)

He then presented and introduced into the record a long letter making the points referred to.

Senator Tillman thereupon offered an amendment or substitute as follows (40 Cong. Record, 7012, May 17):

> "After May 1, 1908, it shall be unlawful for any common carrier to engage in the transportation of interstate commerce, if such common carrier shall at the time be interested, directly or indirectly, by stock ownership or otherwise, in the article or property which is the subject-matter of such commerce, or if it be interested at the time, directly or indirectly, by stock ownership or otherwise, in the mines or factories producing such commerce; or if at the time any officer, director, agent, or employee of such common carrier be interested, directly or indirectly, by stock ownership or otherwise, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same; or if at the time stockholders owning more than 10 per cent of the capital stock of such common carrier be interested, directly or indirectly, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same.

"This section shall not prevent a common carrier from mining coal or carrying articles or property for its own use or for the use of its officers, directors, agents, employees, or stockholders."

Here is the precise question we have been discussing. If this change had been made in the section under consideration the section would have provided that it would be unlawful for a common carrier to transport in interstate commerce any article or commodity if at the time stockholders owning more than ten per cent of the capital stock of such common carrier were interested in the business of buying or selling such articles or property which were the subject-matter of such commerce or in the mines or factories producing the same.

In view of the discussion which had taken place before the Senate, this proposed amendment put up to the Senate squarely the necessity of choosing whether the act should merely prohibit a railroad from transporting articles or commodities which the railroad company owned or had an interest in, etc., or whether it should also prohibit it from transporting commodities if the owner of the stock of the railroad was also interested in the commodities transported.

The Senate rejected the amendment (40 Cong. Record, 7012, 7014, May 17).

Shortly afterwards the following took place (40 Cong. Record, 7013):

"Mr. Elkins: Mr. President, the purpose of this amendment, which was adopted by such a large majority when the bill was under discussion in Committee of the Whole, is to make a start toward divorcing production and transportation. I think the

amendment is drawn as mildly as it can be and accomplish anything.

"The Senator from Washington (Mr. Piles) makes an appeal here that logging roads in his state shall be excepted, or that, on account of their being handicapped so much by this amendment, it should not go into the law. If I understand the Senator's position, and if these logging roads are owned by lumber companies and incidental to their business, the law would not apply to them; or, if I understand, if these are intrastate logging roads or private roads they do not come under the operation of the law, nor are they interstate carriers.

"Mr. Piles: Will the Senator pardon me for a moment?

"Mr. Elkins: Certainly.

"Mr. Piles: It is provided that this bill shall be applicable to carriers partly by rail and partly by water. I have endeavored to demonstrate that these logging roads are carrying partly by rail and partly by water, and it is not only interstate, but it is foreign commerce.

"Mr. Elkins: Which company owns—the steamship company, the lumber, or the railroad company?

"Mr. Piles: One company owns the logging road and the saw mill and the steam schooners.

"Mr. Elkins: Which owns?

"Mr. Piles: One company.

"Mr. Elkins: Which is the owning company?

"Mr. Piles: I do not recall. In some cases it may be the lumber company, and in others it may be the railway company.

"Mr. Elkins: That is the very thing which produces the confusion here. If the lumber company

owns this little line of railroad, 20 or 30 miles long, as an incident to its business, then this proposed law does not apply."

A few minutes later an amendment was adopted excepting "timber and the manufactured products thereof" (40 Cong. Record, 7015).

Other amendments were offered and rejected (40 Cong. Record, 7014, 7015 and 7016), and then the amendment in the form above quoted, with the exception of lumber, and the manufactured products thereof, was concurred in by the Senate (40 Cong. Record, 7017).

After substituting the words "railroad company" for the words "common carrier" the section became a part of the Hepburn Bill and was duly adopted and became the law.

We have urged that upon the face of the statute as it finally came from Congress it is very clear that Congress intended only to prohibit a railroad from transporting commodities when the railroad owned or had an interest in the commodities, etc., and that it clearly omitted to make it unlawful for a railroad to transport commodities when the owner of the commodities had an interest in the railroad.

The amendment of Senator Tillman quoted brought that specific proposition before the Senate and the Senate made a clear, unequivocal and absolute record of its purpose and intent when it voted down the amendment.

When a legislative body in the course of its discussion of a measure before it, votes down a proposition, by that act it makes very clear its intention that that proposition shall not be incorporated into and become a part of the law which it finally adopts.

## APPENDIX B.

### Construction Put Upon the Commodities Clause by the Department of Justice.

In connection with the point now under consideration, it is most interesting and instructive to notice that notwithstanding the Attorney General has been of the opinion that the law ought to prohibit the transportation by a railroad when the owners of the commodities transported also owned the railroad, yet he has been compelled to hold that the law as it now stands does not cover such cases.

Attorney General George W. Wickersham in his Report of Attorney General of December 10, 1910 after referring to the decision of the Supreme Court in the *Hudson* case (213 U. S. 366) said (7):

> "As I point out in my last annual report, if the prohibition of the statute can be successfully evaded by the simple device of transfer of ownership of the property to a corporation, all of whose stock shall be owned or controlled by the carrier, Congress should amend the statute so as to make it an effectual and not a mere illusory prohibition or else repeal it."

In an opinion dated November 29, 1912, to the Secretary of the Interior, Mr. George W. Wickersham, Attorney General, after discussing the *Hudson* case (213 U. S. 366) and the *Lehigh* case (220 U. S. 257) in the Supreme Court, said (Vol. 29, Opinions of Attorney General, p. 592):

> "In the case which you have under consideration the determination whether or not the commodities clause as construed by the Supreme Court in 220 U. S. would apply to the shipment of coal over the Atchison, Topeka and Santa Fe road by the proposed

assignee of a lease, being a corporation all of whose stock it owns, must depend upon whether or not the company uses the coal company merely as an artificial legal entity which it completely dominates and controls, operating the coal company as an integral part of its own business, the corporation being a mere artificial division of the work which is in effect carried on by the railroad company; or whether, although the owner of all of its stock, the coal company is operated separately and distinct from the railroad company and is not used by it merely as a part or department of its general business, and is not in effect a mere device to escape the prohibition of the statute."

Mr. T. W. Gregory, Attorney General, in his Report of Attorney General of December 7, 1914, after discussing the *Hudson* case (213 U. S. 366) and the *Lehigh* case (220 U. S. 257) said, (p. 6):

"It is also necessary, if transportation and production are to be completely divorced, that Congress prohibit any railroad owned or controlled by a producing or trading corporation, and not operated merely as a plant facility, from transporting in interstate commerce articles produced or owned by such corporation, and I recommend the appropriate legislation to that end."

Mr. T. W. Gregory, Attorney General, in his Report of Attorney General of December 16, 1915, repeated the above recommendation in substantially the same words and then stated that, (p. 8):

"A bill to carry out this recommendation was introduced in the last Congress by the chairman of the House Committee on Interstate Commerce (H. R. 20470)."

Apparently Congress disagreed with the recommendation because although a like bill was introduced in the Senate and referred to Committee, neither bill was ever heard of afterwards. (63rd Congress Third Session, Vol. 52, Pt. I, Pg. 838 and 963).

Mr. T. W. Gregory, Attorney General, repeated in his Report of Attorney General of December 4, 1916, and in his Report of Attorney General of December 4, 1917, the same recommendations which he had made in his reports of 1914 and 1915, and in substantially the same words.

Mr. W. J. Donovan, Assistant to the Attorney General, in his Report of Attorney General for 1927, after again expressing prejudice against ownership by industrial companies, said, (pp. 26, 27):

> "The statute does not forbid the ownership of the roads by corporations."